BEFORE THE STATE BOARD OF EQUALIZATION

OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
)
JAMES H. AND HELOISE A. FRAME)

For Appellants: Robert A. Petersen
Certified Public Accountant

For Respondent: Jeffrey M. Vesely
Counsel

O P I N I O N

This appeal is made pursuant to section 18593 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of James H. and Heloise A. Frame against proposed assessments of additional personal income tax in the amounts of $227.25 and $4,007.13 for the years 1973 and 1974, respectively.

For some time prior to the appeal years Mr. Frame was employed by International Business Machines (IBM). During 1970 Mr. Frame was employed in North Carolina where he resided with his family. In 1970 he was transferred by IBM to the Netherlands for a period of two years or more. At the conclusion of his foreign assignment Mr. Frame was transferred to California where he became a resident in March 1973. In both instances Mr. Frame was accompanied by his family, and, pursuant to a written agreement in accordance with IBM's standard policy, appellants were reimbursed by IBM for various expenses related to both transfers. The propriety of appellants' omission of the reimbursements from their California gross income is the sole issue presented in this appeal.

The agreement referred to above provided that, with respect to the move from North Carolina to the Netherlands, appellants were to be reimbursed for shipping their personal belongings, transportation, temporary living expenses, and other specified expenses. Additionally, at the end of the foreign assignment and upon Mr. Frame's transfer from the Netherlands, IBM again was to reimburse appellants for the shipment of their personal belongings, transportation, temporary living expenses, and other specified expenses, It was irrelevant whether Mr. Frame returned to his former work location, or was terminated while on foreign' assignment. In any event the specified moving expenses would be reimbursed by IBM.

In accordance with the above policy, and after appellants became California residents in March 1973, IBM paid to appellants as reimbursement for their, moving expenses, $4,334.00 in 1973 and $45,677.00 in 1974. The expenses included amounts for transportation of household goods and personal property from the Netherlands to California and from North Carolina to California, temporary living expenses, travel, meals, lodging, selling costs related to the sale of their North Carolina residence in May 1974, buying expenses related to the purchase of their new California residence in June 1973, relocation tax assistance, and other miscellaneous expenses.

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Appellants filed a part-year resident return for 1973 omitting the reimbursed moving expenses from their gross income and claiming no deduction for moving expenses. In 1974 appellants, once again, omitted the reimbursed moving expenses and claimed no deduction for moving expenses. As the result of an audit, respondent increased appellants' 1973 and 1974 income by the amount of the reimbursements and allowed moving expense deduc-, tions in the amount of $1,703.00 for 1973 and $9,246.00 for 1974. The moving expense deductions allowed included the following:

	1973	1974
Transportation of Household and Personal Property	$1,160.25	$1,843.80
Travel, Meals and Lodging in Moving from the Netherlands to California	22.28	4,051.79
Temporary Living Expenses in California	520.08	287.63
Qualified Residence Sale, Purchase, or Lease Expense		1,500.00
Miscellaneous Expense		1,562.75
Total	$1.702.61	$9,245.97

Appellant's first argument is that the reimbursement accrued in 1970 when Mr. Frame commenced work in the Netherlands prior to his becoming a California resident, and, therefore, is not taxable by California. Next, appellant argues that the reimbursement was an inducement to accept employment overseas and represented compensation for services performed in the Netherlands; therefore, the moving expense reimbursement relates to a source outside California and is not income for California tax purposes.

Respondent, on the other hand, contends that appellants' right to reimbursement had not accrued prior to their becoming California residents since all events required to fix the right to reimbursement had not accrued and the amount of income to be received was not determinable with reasonable accuracy.

Except as otherwise provided by law, the California persona1 income tax is imposed upon the entire taxable income of every resident of California and upon the entire taxable income of every nonresident which is derived from sources within the state. (Rev. & Tax. Code, § 17041.) Any amount received or accrued, directly or indirectly, by an individual as a payment for or reimbursement of moving expenses is includible in the recipient's gross income as compensation for services. (Rev. & Tax. Code, § 17122.5.) Where a change in residency for California income tax purposes occurs, the law provides:

> When the status of a taxpayer changes ... from nonresident to resident, there shall be included in determining income from sources within or without this State ... income and deductions accrued prior to the change of status even though not otherwise includible in respect of the period prior to such change, but the taxation or deduction of items accrued prior to the change of status shall not be affected by the change. (Rev. & Tax. Code, § 17596.)

The accrual concept of allocating income and deductions set out in section 17596 applies even though the taxpayer is on the cash receipts and disbursements accounting basis. (Appeal of Edward B. and Marion R. Flaherty, Cal. St. Bd. of Equal., Jan. 6, 1969; Cal. Admin. Code, tit. 18, reg. 17596.)

When sections 17041, 17122.5 and 17596 are read in conjunction, it is apparent that appellants can prevail on their first argument only if they can (establish that Mr. Frame's right to receive the reimbursement accrued prior to the time appellants became California residen'ts and was, therefore, attributable to a non-California source. Under the accrual method of accounting, income is includible when all events have occurred which fix the right to receive such income and the amount thereof can be determined with reasonable accuracy. (Spring City Foundry Co. v. Commissioner, 292 U.S. 182 [78 L. Ed. 1200] (1934); Cal. Admin. Code, tit. 18, reg.

17571(a).) If there are substantial contingencies as to the taxpayer's right to receive, or uncertainty as to the amount he is to receive, an item of income does not accrue until the contingency or events have occurred and fixed the fact and amount of the sum involved. (Midwest Motor Express, Inc.; 27 T.C. 167 (1956), affd., 251 F.2d 405 (8th Cir. 1958); San Francisco Stevedoring Co., 8 T.C. 222 (1947); Appeal of Edward B. and Marion R. Flaherty, supra.)

Respondent argues that neither aspect of, this two-pronged test was satisfied prior to appellants becoming California residents in March 1973. We are not entirely convinced that respondent is correct with respect to the first requirement: all events must have occurred to fix the right to receive the reimbursements. It appears from the record that IBM became unequivocally obligated to reimburse appellants for specified moving expenses once Mr. Frame accepted employment in the' Netherlands. In any event, however, we agree with appellant that the second requirement, the amount of income to be received must be determinable with reasonable accuracy, was not fulfilled.

Regardless of whether it is necessary for the amount of income to be ascertainable from known factors or whether a reasonable estimate is sufficient (See Mertens, Law of Federal Income Taxation, §§ 12.61 & 12.76, (1974 Revision) we believe that appellants' argument must be rejected. In this appeal all the information needed to ascertain the amount of reimbursement was not available prior to appellants' change of residency. Furthermore, all the events necessary to facilitate a reasonable estimate had not occurred prior to appellants becoming California residents in March 1973. For example: expenses relating to the sale of appellants' North Carolina residence were not incurred until May 1974, expenses relating to the purchase of their California residence were not incurred until June 1973, relocation tax assistance in excess of $20,000 was not ascertainable until the end of 1974, and temporary living expenses in California were not incurred until after appellants became California residents.

It might be argued that certain expenses were incurred in the Netherlands, and, therefore, specifically ascertainable prior to appellants becoming California residents such as; expenses associated with breaking their Netherlands' lease, temporary living expenses in the Netherlands, and airfare to California. However, these expenses were all allowed as deductions and did not serve to increase appellants' California income. For these reasons we conclude that appellants have failed to establish that the amount of the reimbursement could have been ascertained with reasonable accuracy prior to their becoming California residents in 1973. It follows, therefore, that Mr. Frank's reimbursement for moving'expenses did not accrue prior to his becoming a California resident.

Appellants' second argument is that the reimbursement for'moving expenses was compensation for services rendered in the Netherlands; therefore, the reimbursement was from a source outside California and not income for California tax purposes. In support of their position, appellants rely on the Appeal of William H. Harmount and Estate of Dorothy E. Harmount, Deceased, decided by this board September 28, 1977. We believe appellants' reliance on Harmount is misplaced. In Harmount we' found that m-expense reimbursementpaid to the taxpayer, a nonresident, was an inducement to move from Illinois to California and accept employment here. We held, therefore, that since the payments constituted compensation for services to be performed within this state the income was from California sources. The thrust of Harmount is that the taxpayer was a nonresident when the right to reimbursement occurred. Had the taxpayer been a resident when the right accrued, the source of the income to be received would have been irrelevant (See Rev. & Tax. Code, § 17041.) In this appeal Mr. Frame was a California resident when the right to reimbursement accrued. Thus, appellants' second argument must be rejected.

For the reasons set forth above, we conclude that respondent's action in this matter must be sustained.

O R D E R

Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to section 18595 of the Revenue and Taxation Code, that the action of the **Franchise**' Tax Board on the protest of James H. and Heloise A. Frame against proposed assessments of additional personal income tax in the amounts of $227.25 and $4,007.13 for the year 1973 and 1974, respectively, be and the same is hereby sustained.

Done at Sacramento, California, this 14th day of November , 1979, by the State Board of Equalization.

, Chairman

, Member

, Member

, Member

, Member

BEFORE THE STATE BOARD OF EQUALIZATION

OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
)
JAMES H. AND HELOISE A. FRAME)

ORDER DENYING PETITION FOR REHEARING

AND CORRECTING CLERICAL ERRORS

Upon consideration of the petition filed November 23, 1979, by James H. and Heloise A. Frame for rehearing of their appeal from the action of the Franchise. Tax Board, we are of the opinion that none of the grounds set forth in the petition constitute cause for the granting thereof and, accordingly, it is ordered that the petition be and the same is hereby denied and that our order of November 14, 1979, be and the same is hereby affirmed.

It is also ordered that the word "appellant" be changed to 'respondent" in the eleventh line of the first full paragraph on the fifth page; that the citation appearing in the fourth and fifth lines of the second paragraph on the fifth page commencing with the words 'Regardless of" be changed to "(See 2 Mertens, Law of Federal Income Taxation, §§ 12.61 & 12.76, (1974 Revision))"; that the words "Mr. Frank's' be changed to "Mr. Frame's" in the thirteenth line on the sixth page; that the phrase 'from California sources" be changed to "from a California source' in the fifteenth line of the first full paragraph on the sixth page; that the word "occurred" be changed to "accrued" in the seventeenth line of the first full paragraph on the sixth page of our opinion of November 14, 1979; and that the word "year" be changed to "years" in the sixth line of the second full paragraph of our order of November 14, 1979.

Done at Sacramento, California, this 11th day of December , 1979, by the State Board of Equalization.

_____, Chairman

_____, Member

_____, Member

_____, Member

_____, Member